

IMPEL ENERGY CORP.

IBLA 81-480

Decided May 12, 1982

Appeal from decision of Colorado State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application, C 30596.

Affirmed.

1. Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Noncompetitive Leases

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where on a simultaneous oil and gas lease application a corporate applicant references a corporate qualifications file which is incomplete, the application is defective, the corporation has not established its qualifications as required by 43 CFR 3102.2-5, and pursuant to 43 CFR 3112.6-1(b), BLM properly rejects the application.

2. Oil and Gas Leases: Generally -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: First-Qualified Applicant

A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of second and third drawn qualified applicants have intervened.

APPEARANCES: Ted J. Gengler, Esq., and James M. Colosky, Esq., Denver, Colorado, for appellant.

## OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Impel Energy Corporation appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated March 11, 1981, rejecting simultaneous oil and gas lease application, C 30596, which received first priority for parcel 377 in the July 1980 filing. BLM rejected the application because the corporation's qualifications were not complete at the time the offer was filed, in that a complete list of officers was not on file as required by 43 CFR 3102.2-5(a)(3). This regulation provides in pertinent part:

(a) A corporation which seeks to lease shall submit with its offer, or application if leasing is in accordance with Subpart 3112 of this title, a statement showing:

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(3) A complete list of corporate officers, identifying those authorized to act on behalf of the corporation in matters relating to Federal oil and gas leasing;

In its decision BLM stated:

At the time the offer was filed, the following officers were identified in the corporate qualifications file:

Joseph P. D. Hull	- President
James R. Parish	- Vice President & Chief Financial Officer
Orin C. Crane	- Vice President - Land
Gerald E. Schneider	- Asst Sec'y

Your letter of February 26, 1981, lists the names and positions held of ALL officers for Impel Energy Corporation in effect as of July 1, 1980, as the following:

I. L. Bielenberg	- Chairman of the Board, Director
J. P. D. Hull	- President, Director
J. R. Parish	- Vice President, Chief Financial Officer
O. C. Crane	- Vice President
D. J. Stevenson	- Secretary
G. E. Schneider	- Treasurer, Controller, Assistant Sec'y

Therefore, the list of officers on file in Impel Energy Corporation's qualifications file during the July, 1980, simultaneous filing period was not complete since I. L. Bielenberg - Chairman of the Board and D. J. Stevenson - Secretary were not listed as officers.

In its statement of reasons, appellant asserts that at the time the lease application was filed, its corporate qualification file C 22927 did contain a complete list identifying all corporate officers authorized to act

on behalf of the corporation in matters relating to oil and gas leasing. Appellant explains that I. L. Bielenberg, Chairman of the Board and a director, is not an officer within the meaning of the regulations, and that D. J. Stevenson, Secretary, had no duties or authorities in regard to Federal oil and gas leasing. Appellant attached the affidavit of Stevenson which states that during his tenure as Secretary he at no time participated in the simultaneous leasing system on his own behalf or in any capacity which could be attributed to an action of appellant.

Appellant bases its appeal on the following contentions:

1. The alleged deficiency in the corporate qualifications file (C-22927) of Impel Energy Corporation was not a matter going to the qualifications of the corporation, but a matter concerned solely with the Bureau of Land Management's continuing efforts to ensure that no party has more than one opportunity for a lease in a simultaneous oil and gas filing. Therefore, there is no failure to show the qualifications of Impel to hold a Federal oil and gas lease;

2. The information sought by BLM has consistently, in Departmental practice, supported by decisions of this Board, been sought and furnished after lease application; and

3. The regulations [43 C.F.R. 3102.2-5 (1980)], is ambiguous, and a normal reading would not apprise a person reading it that anything other than a list of officers authorized to act on behalf of a corporation in matters relating to oil and gas leasing is required.

[1] We find that the deficiency in the corporate qualifications file was a matter relating to appellant's qualifications. 43 CFR 3102.2 is entitled "Statements of qualifications." 43 CFR 3102.2-5, specifically dealing with corporations, requires, inter alia, that a complete list of corporate officers be submitted with the application. Therefore, in order to establish its qualifications to hold an oil and gas lease, a corporation must comply with 43 CFR 3102.2-5. A noncompetitive oil and gas lease for Federal lands may be issued only to the first-qualified applicant. 30 U.S.C. § 226(c) (1976); McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955); Altex Oil Corp., 61 IBLA 270 (1982). 43 CFR 3112.6-1(b) requires rejection of a simultaneous lease application where a corporate applicant has not complied with 43 CFR 3102.2-5. Regulation 43 CFR 3112.6-1(b) reads: "Unqualified applicants. The application of any applicant who is unqualified or has not filed or caused to be filed all evidence of qualification required by Subpart 3102 of this title shall be rejected." 1/

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1/ On Feb. 26, 1982, the Department published interim final regulations which revised 43 CFR Subpart 3102 effectively eliminating the requirement to file the statement of corporate qualifications found in 43 CFR 3102.2-5. See 47 FR 8544 (Feb. 26, 1982). In absence of countervailing public policy reasons or of intervening rights, this Board may apply an amended version of a

Under 43 CFR 3102.2-1(c) the corporate applicant may file an appropriate statement for reference in one of the BLM State Offices requesting that it be given an identification number, and refer to that number on subsequent applications so long as it remains current. Amendments to the file may be attached to an application if the file is not current and reference to the file made to establish qualifications for a particular application. In this case, however, appellant referenced a file which was not current without attaching the required additional information and, therefore, its application was defective.

[2] In the simultaneous filing system, an applicant must establish its qualifications at the time of the filing. Redwood Empire Land & Royalty Co., 62 IBLA 296 (1982). A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing for the reason that the rights of the second and third qualified applicants have intervened. Jeff Co., 61 IBLA 74 (1981); Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), *aff'd*, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1978). *But cf.* Trans-Texas Energy, Inc., 57 IBLA 32 (1981) (over-the-counter noncompetitive lease offer may be cured but takes later priority). Strict compliance with the requirements of the regulations is required to ensure fairness and uniformity to all applicants for each simultaneous drawing. Appellant refers to cases in which BLM permitted later evidence to be submitted in order to determine if violations of the sole party-in-interest or multiple filing regulations had occurred. These cases, unlike appellant's case, do not involve a defective application which an unqualified applicant attempted to cure by submitting information subsequent to the filing of the application.

Appellant has not convinced us that 43 CFR 3102.2-5(a)(3) is ambiguous. Stevenson was secretary of the corporation but not listed with BLM as a corporate officer. <sup>2/</sup> The fact that he was not authorized to act on behalf of the company in matters related to oil and gas leases does not relieve appellant from complying with regulations by providing a complete list of the officers of the corporation. Since appellant did not submit a complete list of officers with its application, or refer to a corporation qualifications file containing such a list, its application was defective, and BLM properly rejected it. Cimarron Corp., 61 IBLA 90 (1981).

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fn. 1 (continued)

regulation to a pending matter where it benefits the affected party to do so. *See* James E. Strong, 45 IBLA 386 (1980); Wilfred Plomis, 34 IBLA 222, 228 (1978); Henry Offe, 64 I.D. 52, 55-56 (1957). In this case, however, it is not possible to do so because of the intervening rights of the second and third priority applicants.

<sup>2/</sup> It is not necessary to consider appellant's argument that Bielenberg as Chairman of the board and a director of the corporation is not an officer of the corporation within the meaning of the regulations.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier  
Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

